STATE OF MICHIGAN

COURT OF APPEALS

KATHLEEN CORREA,

        Plaintiff-Appellant,

v

DARREN ESTES STREETMAN,

        Defendant-Appellee.

UNPUBLISHED
September 30, 2003

No. 239872
St. Clair Circuit Court
LC No. 01-000407-DP

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order requiring defendant to pay child support retroactive to the entry date of her amended judgment of divorce. We affirm in part, reverse in part, and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On May 20, 1996, plaintiff was granted a judgment of divorce from George Correa. On September 12, 1996, plaintiff gave birth to a child. The next day plaintiff and defendant executed an affidavit in which they acknowledged that they were the child's natural parents. On December 15, 2000, the Macomb Circuit Court entered an amended consent judgment of divorce that stated that DNA testing eliminated George Correa as the child's biological father.

On February 12, 2001, plaintiff filed a complaint seeking child support from defendant. The St. Clair County Friend of the Court recommended that defendant pay child support in the amount of $72 per week and childcare in the amount of $14 per week retroactive to the date the complaint was filed. Plaintiff objected to the recommendation, arguing that the order for support should be retroactive to either September 13, 1996, the date plaintiff and defendant executed the affidavit acknowledging their parentage, or the 1997 date on which she filed her first complaint seeking an order of filiation and support. The trial court found that *Hoshowski v Genaw*, 230 Mich App 498; 584 NW2d 368 (1998), the case on which plaintiff relied, was inapplicable, and held that plaintiff was entitled to an order for support retroactive to December 15, 2000, the date on which the amended judgment of divorce was entered.

In *Hoshowski*, the Court held that a putative father who has executed a valid affidavit of paternity in accordance with the Revised Probate Code was not required to proceed under the Paternity Act, MCL 722.711 *et seq*., before bringing an action for custody under the Child Custody Act, MCL 722.21 *et seq*. The *Hoshowski* Court held that the plaintiff father's affidavit

established his paternity "for all purposes." *Hoshowski*, *supra* at 501. Plaintiff argues on appeal that *Hoshowski* is applicable and the same conclusion should be reached in this case. We disagree.

MCL 700.111(9), the subsection of the Probate Code on which the *Hoshowski* Court relied, was deleted by 1996 PA 306, effective June 20, 1996, before the child in this case was born. The Acknowledgment of Parentage Act (APA), MCL 722.1001 *et seq*., was enacted by 1996 PA 305, and became effective June 20, 1996. Section 3 of the APA provides, in part, that if a child is born out of wedlock, a man is considered to be the natural father of the child if he joins with the mother of the child and acknowledges that he is the father of the child by completing a form known as an acknowledgment of parentage. MCL 722.1003(1). This acknowledgement establishes paternity and may be the basis for a court order of child support. MCL 722.1004. If a child is born out of wedlock, an action for child support is properly brought under the Paternity Act. *McHone v Sosnowski*, 239 Mich App 674, 677; 609 NW2d 844 (2000). The Paternity Act states that a child is born out of wedlock if the mother was unmarried from conception to the date of birth, or if the court has determined that the child was born or conceived during a marriage but was not the issue of the marriage. MCL 722.711(a). To confer standing, a court determination that the child was not the issue of the marriage must exist before the filing of the complaint asserting paternity. *McHone, supra* at 677-678. The trial court correctly concluded that the child did not meet the definition of a child born out of wedlock at the time plaintiff and defendant executed the affidavit because plaintiff was married at the time the child was conceived. The child met that definition after the Macomb Circuit Court entered the amended judgment of divorce eliminating George Correa as the child's biological father. Only then did the affidavit serve to establish paternity. MCL 722.1003(1).

But this determination is only relevant in regards to when plaintiff could file her action for child support. *Id*. at 678. Once paternity has been established, a court shall award child support retroactive to the date of the child's birth, unless the complaint is filed more than six years from the birth of the child. MCL 722.717(2). Because plaintiff filed her second complaint before the child's sixth birthday, plaintiff is eligible for child support from defendant retroactive to the date of the child's birth. The trial court erred in concluding otherwise. Therefore, we remand for reconsideration of the issue of retroactive support for the period from the child's birth. However, we affirm the trial court's order of filiation.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ Kurtis T. Wilder

I concur in result only.

/s/ William B. Murphy

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